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Universality, cultural diversity and cultural rights**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur in the field of cultural rights, Karima Bennoune, submitted in accordance with Human Rights Council resolution 37/17.

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Report of the Special Rapporteur in the field of cultural rights

Summary

To mark the seventieth anniversary of the Universal Declaration of Human Rights, the Special Rapporteur examines the cultural rights approach to the universality of human rights, and the close interrelationship between universality and cultural diversity. She enumerates current threats to universality, calling for foundational renewal and vigorous defence of this principle.

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I. Introduction: universality, cultural diversity and cultural rights in 2018 and beyond

1. The universality of human rights is one of the most important principles codified in international law during the twentieth century. It is the central idea of the Universal Declaration of Human Rights and a foundational aspect of the entire human rights system. Universality greatly enhances the lives of all human beings everywhere and advances equality, dignity and rights, including cultural rights, and will continue to do so in this twenty-first century and beyond if fully implemented, nourished and revitalized.

2. Universality means that human beings are endowed with equal human rights simply by virtue of being human, wherever they live and whoever they are, regardless of their status or any particular characteristics. Universality must be understood as closely related to other core human rights principles of interdependence, indivisibility, equality and dignity. In practice, it is a critical tool for the United Nations human rights system, diverse regional human rights mechanisms and human rights defenders around the world.

3. However, universality is currently under sustained attack from many directions, including from some Governments, from some on the political right and left, from some non-State actors, including extremists, fundamentalists and populists around the world, and even from some quarters in academia, including those who misuse culture and cultural rights justifications. This poses many challenges for the enjoyment of all human rights, including cultural rights. Cultural rights are a critical component of the universal human rights system, and that system provides their greatest guarantee. Cultural rights are a vital component of universality, and universality is essential to defend the foundations of cultural rights: the flourishing of cultural diversity, cultural mixing and openness, and the right of everyone to take part in a dynamic cultural life without discrimination.

4. The United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, asked in his farewell address to the Human Rights Council at its thirty-eighth session: "why is the Universal Declaration, and the whole body of human rights law that followed it, the object of so much attack now ...?" He attributed this to an instrumentalization of history, to political self-interest and narrow-minded nationalism, and appealed to the members of the Human Rights Council, and indeed to all of us, "to speak louder and work harder for the common purpose and for universal human rights law ..." noting rightly that "the human rights ideal has been the most constructive movement of ideas in our era".[1]

5. We must heed High Commissioner Zeid's appeal. In view of the attacks, we need more than platitudes. We need a foundational renewal of universality, and one which looks back to key standards, histories and achievements, but also forward to sustaining and reinvigorating itself in the future with a broad youth constituency. Human rights advocates and experts must redouble their efforts both to defend the universality of human rights, including cultural rights, and cultural diversity, in accordance with international standards. They must enhance their strategies in both regards.

6. The United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity stresses that "culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of

[1] Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, opening statement and global update on human rights concerns to the thirty-eighth session of the Human Rights Council, Geneva, 18 June 2018.

the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations" (art. 1). It is further emphasized that respect for cultural diversity is a guarantor of international peace and security and of social cohesion, and a root of development, as well as "an ethical imperative, inseparable from respect for human dignity" (art. 4). It grounds respect for cultural diversity in a commitment to the implementation of universal human rights, in general, and the Universal Declaration of Human Rights, in particular. The concept is not an override of universality: "no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope" (art. 4).

7. In recent years, respect for cultural diversity has been threatened by those who deny this human reality and seek to impose monolithic identities and ways of being, by those who advocate various forms of supremacy and discrimination, and by diverse populists, fundamentalists and extremists (see A/HRC/34/56 and A/72/155). Cultural diversity is still wrongly understood as being in opposition to universality, including by some Governments and other actors who misuse it as an excuse for violations of the very universal human rights within which its enjoyment is explicitly embedded, and by others who oppose the concept altogether.

8. In this discussion, we must recognize the very real histories of forced assimilation that have sometimes been imposed, inter alia, on indigenous peoples, minorities and people living under colonialism and the disdain with which their cultural resources have often been treated. Universality is about human dignity, not about homogeneity. But we must also recognize the diversity of diversities, not only between, but within all human collectivities,[2] and the fact that, among others, women, minorities, freethinkers and persons targeted because of their sexual orientation or gender identity have also been wrongfully subject to hegemony and abuse within groups.

9. The Special Rapporteur is unequivocally committed to the principle of the universality of human rights and to cultural diversity and to recognizing and reinforcing the organic relationship between these two commitments. "Provided that cultural rights are fully understood as being part of the wider human rights system and therefore grounded in existing norms and principles of international human rights law, they allow for an enriched understanding of the principle of universality of human rights by taking into consideration cultural diversity" (A/HRC/14/36, para. 3).

10. In the present report, the Special Rapporteur will focus on the cultural rights approach to the universality of human rights, on the close interrelationship between universality and cultural diversity, and on the ways that the fuller realization of cultural rights can contribute to enhancing and defending the universality of human rights. In preparing it, she held two expert consultations, in Geneva and New York, convening experts from every region of the world, with a range of perspectives.[3]

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[2] "The recognition of diversity within different cultures is extremely important in the contemporary world, since we are constantly bombarded by oversimple generalizations about "Western civilization", "Asian values", "African cultures" and so on. These unfounded readings of history and civilization are not only intellectually shallow, they also add to the divisiveness of the world in which we live." Amartya Sen, *Human Rights and Asian Values* (New York, Carnegie Council for Ethics in International Affairs, 1997). Available at www.carnegiecouncil.org/publications/archive/morgenthau/254.

[3] As in previous reports, country situations mentioned herein include cases that have been the subject of previous consideration by United Nations mechanisms and officials, reports from States, multilateral institutions and civil society organizations.

11. This is a key moment to explore these important connections. We must find effective ways of making clear that: (a) cultural rights are not a justification for violations of human rights or attacks on universality, nor are they tantamount to cultural relativism; and (b) respect for cultural rights and cultural diversity, without discrimination and in accordance with international standards and as interpreted by human rights bodies, is a core aspect of implementing universality. These are, in fact, conjoined tasks. Moreover, the defence of cultural rights in accordance with international standards is, actually, a defence of universality and vice versa.

12. The celebration of the seventieth anniversary of the Universal Declaration of Human Rights in 2018 and of the tenth anniversary of the creation of the mandate of the Special Rapporteur in the field of cultural rights in 2019 represent opportunities to further explore these important connections, take stock of the manner in which the development of cultural rights has changed the debate on the relationship between universality and cultural diversity and highlight how we may best defend and promote a universality that is both principled and inclusive, rock solid and thoughtful, pluralist and global, and grounded in the struggle against all forms of discrimination, and that takes into consideration the human rights of all, including those who have historically been marginalized.

II. Legal standards and frameworks on universality and diversity

13. Cultural rights are an expression of and a prerequisite for human dignity. They protect the rights of each person, individually and with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they assign to human existence and development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They also protect access to cultural heritage and resources that allow such identification and development processes to take place. Thus, they are strong vectors for both universality and cultural diversity.

14. The mandate of the Special Rapporteur in the field of cultural rights was tasked from its creation with studying the relationship between cultural rights and cultural diversity (Human Rights Council resolution 10/23, para. 9 (d)).[4] As the Special Rapporteur has reiterated, cultural rights are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence. They are not a licence to impose identities or practices on others or to exclude them from either in violation of international law. They are firmly embedded in the universal human rights framework. As such, limitations on the right of everyone to take part in cultural life in certain circumstances have been acknowledged and defined by the Committee on Economic, Social and Cultural Rights in its general comment No. 21 (2009) on the right of everyone to take part in cultural life (para. 19), in particular in the case of negative practices, including those attributed to customs and traditions, that infringe upon other human rights. This is reminiscent of article 30 of the Universal Declaration of Human Rights, which stipulates that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".[5] Hence, the implementation of human rights must take into consideration respect for cultural

[4] See also Farida Shaheed, Special Rapporteur in the field of cultural rights, statement by the first mandate holder to the fourteenth session of the Human Rights Council, Geneva, 31 May 2010.

[5] See also General Assembly resolution 47/135, annex (Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities), art. 8 (2).

rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms.

A. Relevant international human rights standards on universality and cultural diversity

15. Universality is the cornerstone of human rights law, which likewise enshrines this principle. Article 1 of the Universal Declaration of Human Rights affirms that "all human beings are born free and equal in dignity and rights". Article 2 adds specificity, making clear that neither cultural category nor political status can justify exemption from rights protection.

16. In this seventieth anniversary year and beyond, we have an obligation to remind ourselves of the contributions made by women and men from around the world to the Universal Declaration of Human Rights, and to promote and share the truly global history of this foundational document. Those who tell exclusivist tales about it are spreading dangerous myths and should study the facts, including those contained in the annex to the present report.

17. Today the Universal Declaration of Human Rights is understood by many to be a statement of customary international law[6] and also an authoritative statement of obligations under the human rights provisions of the Charter of the United Nations. Its provisions have been affirmed and adopted in constitutions of countries in all regions and in legally binding treaties.

18. The Charter of the United Nations has specifically endorsed the framework of universal rights in treaty form. In Article 55, the United Nations is mandated to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction", and in Article 56, States pledge to take action to that end.

19. States have reiterated their commitment to universality in, inter alia, standards such as the Vienna Declaration and Programme of Action of 1993, in which they reaffirmed "the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question" (para. 1). This document reiterates that "all human rights are universal, indivisible, and interdependent and interrelated ... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne it mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights" (para. 5).[7] Selective citation of this last provision, omitting the second clause regarding State duties, misrepresents the relationship between cultural rights and the universal rights framework.

20. Women's human rights experts have reminded us that this Declaration's reconfirmation that human rights are universal was one of its most important achievements. Since women's human rights are often prime sites of threat to universality, the affirmation that women's rights are human rights, and hence included within the ambit of universality, was also momentous. "the defense of the universality of rights for women is also crucial to any defense of the universality of human rights; if the violation of the rights of half of humanity can be conditional in the name of

[6] See, among others, John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, New York, Transnational Publishers, 1984), p. 75.

[7] See A/CONF.157/24 (Part I), chap. III (Vienna Declaration and Programme of Action).

culture, religion or nationality, then the rights of anyone can be so conditioned".[8] These commitments were reiterated in the Beijing Declaration and Platform for Action in 1995, in which it was asserted that "any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated".[9] This represented the international community reaffirming article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women. In other words, equality and universal human rights are not overridden by culture or what is claimed to be culture.

21. General Assembly resolution 60/251 mandates the Human Rights Council to promote "universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner" (para. 2). The Council regularly reiterates the importance of ensuring and being guided by the principle of universality.[10] The most recently drafted human rights treaties, including the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, all specifically reaffirmed universality or the applicability of human rights to all regardless of group affiliation.

22. Special procedures mandate holders, experts from the treaty monitoring bodies and the Office of the United Nations High Commissioner for Human Rights have likewise reasserted this tenet and emphasized the importance of ensuring that "traditions", "attitudes" and "customary practices" are not elevated above universal human rights standards.[11] As the Human Rights Committee has underscored: "While acknowledging the diversity of morality and cultures internationally, the Committee recalls that all States parties are always subject to the principles of universality of human rights and non-discrimination" (A/69/40 (Vol. I), para. 127 (10)). Likewise, the Committee on the Elimination of Discrimination against Women has insisted that "cultural characteristics could not be allowed to undermine the principle of the universality of human rights, which remained inalienable and non-negotiable" (A/52/38/Rev.1, para. 64).[12]

23. The principle of non-discrimination, enshrined in a large number of international legal instruments, constitutes an important legal basis for the relationship between universality and diversity. According to these texts and their interpretation by the relevant treaty bodies, discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights. Everyone must enjoy the same rights, regardless of their distinctive features. At the same time, the enjoyment of rights and freedoms

[8] Charlotte Bunch, "Legacy of Vienna: Feminism and Human Rights", International Expert Conference on Vienna+20, Vienna, 27–28 June 2013.

[9] Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1 (Beijing Declaration and Platform for Action), para. 224.

[10] See, for example, Human Rights Council resolutions 5/1, 6/6, 14/7, 22/5 and 25/11.

[11] See E/CN.4/2006/61/Add.5, paras. 9, 20, 76 and 80; A/HRC/4/34, para. 47; A/HRC/18/35/Add.5, para. 67; Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women, paras. 11 and 23; and general recommendation No. 21 (1994) on equality in marriage and family relations, paras. 21 and 22; Office of the United Nations High Commissioner for Human Rights (OHCHR), "Harmful traditional practices affecting the health of women and children", fact sheet No. 23, August 1995.

[12] See also A/53/38/Rev.1, para. 282.

on an equal footing "does not mean identical treatment in every instance".[13] Caution must be exercised however, as going beyond the permissible scope of differential treatment may in itself constitute a breach of the non-discrimination principle.[14]

24. In its general comment No. 21 on the right to take part in cultural life, the Committee on Economic, Social and Cultural Rights highlighted the importance of cultural diversity for human rights and human dignity. It also confirmed the view that "no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope" (para. 18).

B. Other international and regional standards

25. The relationship between universal human rights and cultural diversity is also explored in other instruments. UNESCO has adopted the Universal Declaration on Cultural Diversity (2001) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). in the Declaration, it is established that universal human rights are "guarantees of cultural diversity" and that "the defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity", which "implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples" (art. 4). It is also stated that cultural rights are "an enabling environment for cultural diversity" (art. 5). The Convention builds on the Declaration by affirming that "cultural diversity can be protected and promoted only if human rights and fundamental freedoms ... are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof" (art. 2).

26. The 2030 Agenda for Sustainable Development (General Assembly resolution 70/1) is also steeped in universality and respect for diversity. It envisages "a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity ... A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed" (para. 8). It refers to the concept of "universal" no fewer than 29 times, and it is explicitly grounded in the Universal Declaration of Human Rights and subsequent human rights standards (para. 10). The Sustainable Development Goals set out in the 2030 Agenda cannot be achieved without the vigorous defence of universality, nor can meaningful universality be realized without effectively meeting the agreed targets. Paragraph 36 of the 2030 Agenda acknowledged that cultural diversity, as well as cultures, can contribute to, and are crucial enablers of, sustainable development.

C. National court cases

27. The law is a source of important norms guaranteeing universal human rights, but also a terrain of struggle over these rights. International and national law and courts can and should be used to advance universal human rights norms over claims of relativism and particularism. The Special Rapporteur lauds, for example, an important recent judgment in the United Kingdom of Great Britain and Northern

[13] Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 8.

[14] Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 13.

Ireland, shaped by the intervention of women human rights defenders, which rejected religiously justified gender segregation in education.[15] "This judgment is a vital step forward in our effort to persuade the courts and State bodies to take account of the misogyny and gender stereotyping that is promoted in our schools and universities in the name of religious and cultural freedom."[16]

28. Another positive example is the recent innovative citation of the Convention on the Rights of the Child by a judge in an appeals court in Mazandaran province in the Islamic Republic of Iran when denying the petition of a man seeking to revoke his former wife's child visitation rights because she remarried.[17] Every effort must be made to facilitate such use of the courts and the law to defend universality, including by facilitating the legal participation of human rights defenders.

III. Universality: at the heart of human rights culture and at the centre of the counter-attack against human rights

29. Universality goes to the heart of human rights and of who we are as human beings. It "can be found in the most intimate of all identities: relationships with life, death, sex, age, others, water, sand, trees ... knowledge, filiations".[18]

30. Universality is both an overarching concept of human rights and the skeleton that constitutes the framework of rights. It focuses both on "the universality of application as well as on the universality of obligation".[19] It is the test against which respect for rights, enjoyment of rights and their indivisibility can be measured. Like "culture", universality is not a static concept but an evolving one that has grown to offer greater rights protection, including equal protection from abuses by a range of actors, including State and non-State actors, whether individuals or corporations, and issues previously seen as outside the topic of international law, such as domestic violence.

31. Ardent defenders of the universality of human rights are found in all regions of the world. Its opponents are likewise geographically diverse. The antecedents and architects of universality similarly emerged from every region. It is a truly global project, not an idea that belongs to or springs from any one country or region. People and Governments in every part of the world are capable of violating or sustaining this idea.

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[15] England and Wales Court of Appeal, HM Chief Inspector of Education, *Children's Services and Skills v. The Interim Executive Board of Al-Hijrah School*, Case No. C1/2016/4313, Approved Judgement, 13 October 2017, on appeal from the High Court of Justice.

[16] Southall Black Sisters, "Court of Appeal finds the gender segregation can amount to unlawful sex discrimination", press release, 13 October 2017.

[17] See partial translation in Omid Salimi Bani, "The Judiciary: in Mazandaran Court, a judge appeals to international law", Human Rights and Democracy for Iran, 7 January 2017. See also www.isna.ir/news/95101911493/سند-مازندران-در-دادگاه-یک-سابقه-بی-رای.

[18] Patrice Meyer-Bisch, "Les droits culturels, un principe éthique de coopération et un levier de développement", keynote address for the panel "Cultural rights under pressure — a contemporary arts perspective" at the Crossroads conference organized by Pro Helvetia, Basel, 8 February 2018 (translated by the author).

[19] Sunila Abeysekera, "The High Commissioner's promotion of universality of human rights", in Felice D. Gaer and Christen L. Broecker, eds., *The United Nations High Commissioner for Human Rights: Conscience for the World* (Leiden, The Netherlands, Martinus Nijhoff Publishers, 2014), p. 121.

A. Today's complex reality: attacks on the concept of universality and advances in its realization

32. Entire systems of thought are today based on opposing the principle of a shared humanity. As the Special Rapporteur has previously noted, at the heart of the fundamentalist and extremist paradigms are rejections of equality and the universality of human rights, making unwavering defence of those principles the touchstone of the human rights response (A/HRC/34/56, para. 2).

33. It is no accident that the rhetoric of universality often resonates most strongly with the persons who are most marginalized and discriminated against, and that especially those working for the rights of these persons have insisted on this principle.[20] The Special Rapporteur recalls that African-American high school students among civil rights protestors in the iconic 1965 march in Selma in the United States of America carried the flag of the United Nations.[21] Today, for example, the framework of universal rights, non-discrimination, justice and dignity is used regularly by human rights defenders working to ensure the rights of Dalits and challenge caste-based discrimination in India.[22] Attacks on universality often come from the more powerful who seek to destroy a tool used to remedy the power differential. Hence, the defence and strengthening of this principle is vital for making rights for all, including cultural rights, a reality.

34. The Special Rapporteur is troubled by documented efforts to use the concept of universality to exclude certain rights and rights holders from protection. In this anti-rights lexicon, universality, couched as "universally accepted", means that human rights only apply to particular categories of people if everyone agrees, which turns the idea of universality into a contingent popularity contest rather than inherent protection for all, including the most discriminated against. Anti-rights actors manipulate the use of the terms "universal" and "fundamental" rights to apply only to certain human rights, often attempting to cast sexual and reproductive rights or the rights related to sexual orientation and gender identity as optional.[23] Universality is a framework for inclusion, not exclusion.

35. The increasing attacks in many countries on human rights defenders, including cultural rights defenders, and limitations on their ability to engage in universal human rights work, including through labelling them as "foreign agents", curtailing their ability to receive international funding or adopting additional norms that disproportionately restrict the work of human rights organizations, are very worrying

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[20] The importance of universality has been reiterated by many United Nations human rights experts, including those who work on the rights of marginalized persons, such as the Special Rapporteurs on the rights of persons with disabilities (A/HRC/37/56 and A/HRC/34/58, para. 32), on freedom of religion or belief (A/HRC/37/49 and E/CN.4/2002/73/Add.2, paras. 27 and 29), on the right to education (E/CN.4/2003/9, para. 23), on the rights of indigenous peoples (A/68/317, para. 70) and on violence against women (A/HRC/4/34, para. 22).

[21] Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge, Massachusetts, Harvard University Press, 2001), p. 189.

[22] See, for example, the work of Jan Sahas Social Development Society. Available from http://jansahasindia.org.

[23] See Naureen Shameem, *Rights at Risk: Observatory on the Universality of Rights Trends Report 2017* (Toronto, Association for Women's Rights in Development, 2017), p. 84; and Human Rights Council resolution 32/2, preamble.

and must be ended in accordance with international standards.[24] To cite only a few illustrative examples, the Special Rapporteur was dismayed that Egyptian woman human rights defender Mozn Hassan, director of Nazra for Feminist Studies, has been subjected to a travel ban, had her assets frozen and been summoned for interrogation on the basis of charges including "changing the cultural values of women and inciting the irresponsible liberation of women in society".[25] If we are to achieve universal human rights, we need more Mozn Hassans and we need them to be able to do their work unimpeded.

36. The Special Rapporteur is also deeply concerned by the case of Qin Yongmin, a prominent human rights defender in China who was convicted in July 2018 of "subversion of State power" and sentenced to 13 years in prison. Among the evidence presented against him by the prosecutor was a book in which he called on the Government of China to protect human rights in accordance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.[26] This sends a chilling message to all human rights defenders.

37. There are signs of positive developments at the national and international levels in recognizing the equal and universal rights of those facing systematic discrimination, including with regard to their intimate lives, identities and choices. For example, the overwhelming success of the Irish referendum on 25 May 2018, which abrogated the eighth amendment to the constitution, paving "the way for the development of a new legislative and regulatory framework for access to abortion services"[27] that is more conducive to guaranteeing women's equal right to the highest attainable standard of health, and the creation in 2016 of the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Human Rights Council resolution 32/2), both represent such steps forward.

38. The call of the former Special Rapporteur on human rights and the environment, John H. Knox, for international recognition, similar to that in regional instruments, of the human right to a healthy environment is another positive development, which the Special Rapporteur endorses (see A/HRC/37/59, paras. 11–16). The universality of human rights, including cultural rights, has no meaning without a liveable environment in which they can be enjoyed.

39. However, there are also worrying signs of a backlash against universality, such as (a) well-resourced and orchestrated efforts by some Governments, government-

[24] See, for example, joint allegation letter, case No. IND 10/2016, and joint allegation letter, case No. IND 2/2016 (India); joint allegation letter, case No. ISR 1/2016, and related press releases from United Nations News, "United Nations experts urge Israel lawmakers to halt proposed legislation targeting civil society groups", 24 June 2016, and "United Nations office raises concern about Israel's 'NGO Transparency Law'", 19 July 2016 (Israel); and E/C.12/RUS/CO/6, paras. 7 and 8 (Russian Federation). For further examples, see A/HRC/38/34, and for critically important recommendations, see "20th anniversary of the UN Declaration on Human Rights Defenders", joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights treaty bodies and the Special Rapporteur on the situation of human rights defenders.

[25] Memorandum in Case No. 173, issued by the Cairo Court of Appeal Investigations Office, 11 January 2017 (unofficial translation for the Special Rapporteur). See also Nazra for Feminist Studies, "The summon of feminist and woman human rights defender Mozn Hassan to investigation within the context of the NGO foreign funding case", press release, 18 June 2018.

[26] Chinese Human Rights Defenders, "China sentences veteran human rights defender Qin Yongmin to 13 years in prison", 11 July 2018; Indictment No. 107, The People's Procuratorate of Wuhan City, Hubei Province, China, 17 June 2016.

[27] Irish Human Rights and Equality Commission, "Oireachtas must now legislate to vindicate the human rights of women and girls in accessing healthcare", press release, 26 May 2018; see also CEDAW/C/IRL/CO/6-7.

backed groups, international organizations and civil society groups to campaign internationally against universality;[28] and (b) the frequent misuse of the concept of "religious freedom" in ways that contravene important standards governing freedom of religion or belief, to advocate against equality and universality.[29] Meanwhile, the withdrawal by the United States of America from the Human Rights Council, justified officially with criticisms of the Council, but publicly explained by a prominent official as a rejection of international human rights scrutiny,[30] is another shameful example. All of these steps backwards undermine human rights and should be condemned. Moreover, weakening or defunding the institutions designed to guarantee the implementation of human rights norms is likewise incompatible with a commitment to universality.[31]

40. There are many forms of relativism that undermine human rights culture and meaningful universality. These include cultural relativism, which is addressed in detail below. They also include the refusal to recognize entire categories of rights, such as economic, social and cultural rights, as human rights. Such an approach results in a selective universality, which is not acceptable either. Tolerance of widespread extreme poverty or diminished access to health care in the name of markets is as deeply undermining of universality as is the attempt to justify discrimination in the name of culture.

41. Blanket refusals to recognize the justiciability of human rights obligations or attempts to make domestic law superior to international human rights law, while failing to implement international human rights obligations, likewise result in relativism in practice. Other forms of relativism may be found in anti-immigrant rhetoric, which suggests incorrectly that all human rights stop at borders or are only to be afforded to citizens, and in the misuse of the concept of national sovereignty to avoid legitimate human rights scrutiny.

42. A robust universality must include civil, cultural, economic, political and social rights, must include the rights of all people and must envisage and enable their full implementation.

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[28] For example, the Special Rapporteur deeply regrets that the following language is used on the website of Human Rights High Council of the Islamic Republic of Iran: "It must be noted that human rights texts, drafted in the West, are imposed on other peoples through various means. This all-out attack … goes so far as to deny other peoples of the world their individual and social freedoms, whereas the proud peoples of the world, relying on their native and regional values, and relying on cultural diversity, combat this Western mechanism". According to the website, this official body campaigns "aggressively" at the international level against the worldview it ascribes to universal norms (unofficial translation for the Special Rapporteur).

[29] See, for example, A/HRC/34/50, paras. 44–50, and A/HRC/38/46.

[30] For the official statement, see Mike Pompeo, Secretary of State, United States of America, and Nikki Haley, United States Permanent Representative to the United Nations, remarks on the United Nations Human Rights Council, Washington, D.C., 19 June 2018. In a radio interview that same day on a programme with some 7 million listeners, the National Security Adviser of the United States, John Bolton, explained the decision of the United States as follows: "Fundamentally … this is a rejection of the notion that multilateral organizations are in a position to judge representative Governments like the US, or to try and impose their view of what an adequate human rights performance is". See The Mark Levin Show, Audio Rewind, 19 June 2018.

[31] See, for example, Coordination Committee of Special Procedures and Chairpersons of Human Rights Treaty Bodies, "We cannot let it go bankrupt", statement on the Inter-American Commission on Human Rights financial crisis, Geneva, 3 June 2016.

B. A universal human rights culture

43. Universality is a global human project, and an ongoing one, and has become a part of global cultures. Around the world, countless human rights defenders and advocates, experts, political actors and, most importantly, ordinary people from many diverse backgrounds have embraced and internalized the notion of the universality of human rights as being central to their work, their advocacy, their politics and the way that they live their lives and take part in cultural life. The universality of human rights is itself an important cultural project. Recognition of human dignity, equality and justice, as well as abuses of rights, often takes place through the mode of lived experience.

44. Governments have primary obligations to promote, protect and implement the concept of the universality of human rights. Other actors, including international organizations, transnational corporations, experts, the media and indeed "every individual and every organ of society", to use the terms of the Universal Declaration of Human Rights, have a role to play in striving for universal rights. The role of human rights defenders in promoting universality is also critical. The Special Rapporteur was pleased to note the recent creation by a global coalition of human rights defenders of an Observatory on the Universality of Rights to monitor international developments in this regard, and welcomes efforts of this kind, which should be encouraged and supported.[32]

45. As asserted in the *UNESCO World Report 2009*, "recognition of cultural diversity grounds the universality of human rights in the realities of our societies by drawing attention to their appropriation by all individuals who can identify these rights with a sense of ownership, regardless of language, tradition and location".[33] Each society is encouraged to highlight the expressions of universal human rights embodied in its languages and traditions, to identify in its own diverse cultural resources, in sayings, tales and philosophical wisdom, the values at the root of human rights and of human dignity. One example is a Mauritanian initiative in which students collected and analysed examples of values and traditions to raise awareness of the manifold links between them and universal human rights.[34] Connecting universal values with lived realities and aspirations and being able to quote an article of the Universal Declaration together with a traditional saying that conveys the same message reinforces the ownership of these values.

46. The *World Report* further notes "the fact that these rights and freedoms are meant to be exercised in a wide variety of cultural environments by no means implies that universal norms can be relativized in terms of their application" (p. 225). It is the nature of inherent, universal human rights norms to apply in all social and cultural contexts. As stated repeatedly by the mandate holders in the field of cultural rights, cultures are dynamic, they change over time and are areas of internal debate and contestation. Not all expressions of cultural diversity are acceptable when viewed from the perspective of universal human rights. Each tradition and practice identified as "cultural" has to stand the test of universal human rights and show its capacity to build and maintain human dignity to be legitimate.[35] The exercise of cultural rights

[32] See www.oursplatform.org.

[33] United Nations Educational, Scientific and Cultural Organization (UNESCO), *UNESCO World Report. Investing in Cultural Diversity and Intercultural Dialogue* (Paris, 2009), p. 225.

[34] Abdoulaye Sow, "Traditions, droits humains et diversité culturelle face aux mutations sociales en Mauritanie", submission at the Special Rapporteur's expert consultation, March 2018.

[35] Jean-Bernard Marie, "L'universalité des droits de l'homme revisitée par la diversité culturelle", in Gilbert Vincent (ed.), *La partition des cultures: droits culturels et droits de l'homme* (Strasbourg, presses universitaires, 2008), p. 387.

enables each person to freely develop and contribute to the creation of culture, including through the contestation of dominant norms and values.[36]

47. Universality is not meant to be a weapon against cultural diversity, nor is cultural diversity a weapon against universality. The two principles are mutually reinforcing and interlocking.

IV. Cultural relativism: deconstructing humanity in the name of culture

48. Cultural relativism has been repudiated by international human rights law, so codified and accepted by Governments from every region of the world. Such a stance is often adopted with regard to the rights of others, deemed to have lesser or different rights claims because of the collective to which they are assumed to belong. Almost no one would relativize her or his own rights. As Fatiha Agag-Boudjahlat asks, why should some women accept what others refuse for themselves and their daughters?[37] There can be no category of "second-class humans".[38] Yet, cultural relativism regularly rears its ugly head in United Nations forums and in university classrooms, even in the field of human rights. Both some apologists for colonialism and some who consider themselves "post-colonial" have sometimes used similar arguments to justify their cultural relativism. This must be tackled through creative, contemporary and fully resourced human rights education. Cultural relativism is no mere theoretical construct; the exclusions from rights protection it seeks to create have grave, sometimes lethal, consequences.

49. Millions of people around the world, including the Special Rapporteur's grandfather, Lakhdar Bennoune, a peasant leader, died defeating colonialism, itself a form of relativism. The power dynamics of hegemony and the imposition associated with this phenomenon are to be scrupulously avoided. However, those who laid down their lives to end colonialism were fighting for more freedom, not less; for more rights, not less; for the right to be considered equally human and entitled to equal rights, not inherently different and entitled to different rights. Misusing colonial history to justify contemporary human rights abuses insults their memory and undermines their achievements. "The idea that different peoples were endowed with separate rights would have seemed absurd in the middle of the twentieth century to those struggling against colonial oppression, or trying to build new nations."[39]

50. Efforts to advance the universality of rights have been made in every part of the world, though some are more recognized than others. "It is too easy to forget that the movements and revolts against slavery, against colonization, for self-determination, independence ... and anti-apartheid in South Africa were vitalized and articulated using the universal language of rights and equality, what we call human rights today."[40]

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[36] United Nations Development Programme, *Human Development Report 2004: Cultural Liberty in Today's Diverse World* (New York, 2004), p. 4.

[37] Fatiha Agag-Boudjahlat, *Le grand détournement: féminisme, tolérance, racisme, culture* (Paris, Cerf, 2017), p. 86 (translated by the Special Rapporteur).

[38] Human Rights Watch, "70 years of the Universal Declaration of Human Rights: closing the implementation gap", 28 February 2018.

[39] Gita Sahgal, "Who wrote the Universal Declaration of Human Rights?", Open Democracy, 2012, available at www.opendemocracy.net/5050/gita-sahgal/who-wrote-universal-declaration-of-human-rights.

[40] Chetan Bhatt, "The challenges to universalism", presentation at the Special Rapporteur's expert consultation, 28 February 2018.

51. The Special Rapporteur is saddened to see that anti-rights actors today regularly use the expression "culture" as a trope for cultural relativism in human rights debates. The resurgence of cultural relativism represents a particular threat to human rights, including the rights of women and of members of minorities — and its proponents sometimes attempt to use a cultural rights justification for their arguments. "Arguments that are based on 'relativism' or 'cultural specificity' also seek to place individuals and groups from marginalized communities outside the protection of international and national human rights protection mechanisms."[41]

52. As the Special Rapporteur has noted previously, the fact that the Convention on the Elimination of All Forms of Discrimination against Women is the human rights convention subject to the most reservations, many of which are based on unacceptable cultural relativist excuses for not implementing women's equality, is a matter of grave concern (A/72/155, para. 6). International law allows States to make reservations if they do not undermine the object and purpose of a treaty. However, reserving the right to discriminate on the basis of claimed religious and cultural arguments when ratifying a treaty whose main goal is to prohibit discrimination is a clear violation of universality, as well as a nonsensical endeavour that should be without legal effect. The same concern applies to endless and boundless uses of derogation clauses whose application is clearly limited by international law.

53. It is reprehensible that relativist arguments find their way into the text of United Nations resolutions. In each country, there is an obligation to realize all human rights for all persons without discrimination, whatever the state of domestic debates "on matters associated with historical, cultural, social and religious sensitivities", as referenced in Human Rights Council resolution 32/2. Sensitivities do not overrule the international human rights obligations of States. No historical, social, cultural or religious sensitivities can justify the criminalization of one's sexual orientation or gender identity, or any other discriminatory or violent actions based on these grounds.[42]

54. The concept of the "protection of the family", introduced in resolution 26/11, has similarly "been used to undermine women's rights by challenging universal human rights to equality and non-discrimination" (A/HRC/38/46, para. 13), as has the attempt to use undefined "traditional values" to limit human rights, in particular through Human Rights Council resolution 12/21. The Special Rapporteur concurs with the Advisory Committee, which noted that "tradition is often invoked to justify maintaining the status quo ... Those who benefit most from the status quo are more likely to appeal to tradition to maintain power and privilege, and also to speak on behalf of tradition, while those most marginalized and disenfranchised have the most to lose from a traditional values approach to human rights" (A/HRC/22/71, para. 40). It is worth recalling that at certain times and in certain places, slavery, alien domination and even systematic racial discrimination were all justified by recourse to "traditional values", things which are considered entirely repugnant today.

55. It is also problematic that efforts to encourage the fulfilment of universal human rights obligations for all are sometimes portrayed as "external pressure and coercive measures ... with the aim of influencing the relevant domestic debates and decision-making processes at the national level" (Human Rights Council resolution 32/2). It is positive when these obligations are recalled as conditions to assistance programmes in an effort to strengthen the realization of universal human rights. The alignment of

[41] Abeysekera, "The High Commissioner's promotion of universality", p. 122.

[42] Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, address to the Identity Conference, Toronto, 24 May 2018. See also A/HRC/19/41.

international relationships with universal human rights obligations is consistent with the promises of the Universal Declaration of Human Rights.

V. Strengthening the universality, indivisibility and interdependence of human rights by implementing cultural rights

56. The debate on cultural relativism is often framed as if to suggest that only some, usually non-"Western", people have culture, that culture is monolithic, represented by the State or by particular (often male) religious or traditional leaders, and as something that is invariably in opposition to what are claimed to be "Western human rights norms". This is a gross mischaracterization of the world we live in, in which, as the Special Rapporteur has noted in the past: (a) all people and all peoples have culture, not merely certain categories or geographies of people; (b) cultures are human constructs constantly subject to reinterpretation; and (c) while it is customary to do so, referring to culture in the singular has problematic methodological and epistemological consequences. It must be understood that culture is always plural. "Culture" means cultures (A/HRC/31/59, para. 8). Moreover, universal human rights norms are truly global.

57. Cultures have many positive implications for the enjoyment of universal human rights. Understanding cultural rights as universal rights means respecting and protecting the rights of all persons to participate in the cultural life of their choice, and to manifest their own cultural references and practices, in accordance with international standards. The right to take part in cultural life without discrimination, including the right to participate in decisions to change or cease cultural practices, is a human right in and of itself. Moreover, as the Special Rapporteur explained in detail in her report to the Human Rights Council in 2018 on socially engaged artistic and cultural initiatives, cultural practices and the exercise of cultural rights may be key tools for advancing human rights goals (A/HRC/37/55).

58. Culture permeates all human activities and institutions (A/67/287, para. 2). Acknowledging this fact implies that, in designing the conditions, measures, policies and programmes for the implementation of all human rights, States must pay attention to the internal diversity of their societies and recognize the multiple ways to achieve effective implementation. As when translating a text, the substance of the message — each universal human right — must remain the same, even if the language and expressions — the means of exercising effectively this right in a specific environment — are different. This process increases the accessibility of the substance of each right and improves its implementation.

59. Better integration of cultural rights in the universal, indivisible and interdependent framework of human rights allows for a new understanding of cultural diversity. The cultural rights mandate has demonstrated on many occasions that cultural diversity is both a necessary condition for and the result of the exercise of cultural rights by all. Access to the diversity of persons, knowledge, cultural heritage and creative expressions of others is necessary to develop capacities and expressions. In turn, the way each person participates in and contributes to cultural life adds to the cultural diversity of the environment. They are mutually reinforcing. Cultural diversity goes beyond ethnicity and religion to include all human diversity — resulting from gender, age, relationship with nature, social and economic background, political opinion, geographical origin, migration and other forms of social mix — as well as the diversity of cultural expressions and resources that are continuously created, developed, re-interpreted and transmitted. This diversity of diversities not only defines new cultural freedoms, it also breaks the myth of homogeneous cultural

blocs, questions the authority of any person or institution to impose an interpretation on cultural resources and calls for greater access to cultural goods and practices for all.

60. Cultural diversity is an essential factor for the realization of all universal human rights, and full respect for human rights both creates an enabling environment for, and is a guarantee of, cultural diversity.[43] For instance, oral, audio, visual and written materials, as well as a diversity of physical and virtual spaces, are necessary to realize freedom of expression. It is through respecting this freedom for all that a variety of media, content and forms of expression can flourish. There can be no freedom of thought and conscience in a context where a single ideology is imposed, and protecting freedom of conscience and belief also ensures the existence of a plurality of religions and beliefs. No political decision can be legitimate without there being a real alternative available and ensuring the right for all, including persons belonging to minorities and indigenous peoples, to meaningfully participate in the decision-making processes contributes to a wider array of political options.

61. The efforts to guarantee equal human rights to all persons with disabilities have shown this mutually reinforcing relationship between diversity and all human rights. Disability results from the interaction between persons with impairment, external barriers that hinder their participation, such as attitudinal barriers (for example, stereotypes), and the way that society is organized. The conditions to equally access physical and intellectual resources and opportunities, such as education, employment and mobility, need to be adapted to ensure real life choices and full and effective participation in society. A comprehensive approach to the indivisibility and interdependence of all human rights goes further: it is not sufficient to adapt the conditions, persons with disabilities have the right to access and participate in society from their own cultural perspective, as long as it is compatible with universally recognized human rights. Continuously questioning the norms and processes and giving more thought to how every person can be fully included while respecting their inherent dignity is necessary to ensure the effectivity of universal human rights in ever-changing contexts and realities. Creative solutions to improve diversity in the services and opportunities available, such as audiobooks, tactile reproductions in museums or soundscapes for the arts, often result in greater accessibility for all. There is no default human being who serves as the sole standard for what human rights require.

62. Given the equality that it mandates, universality is of great importance to indigenous peoples in their struggles to keep their cultures and traditions alive and resist assimilation and the compounding effects of colonization, internalization of oppression, displacements from traditional territories and the reconstruction of cultures and communities in urban centres.[44] For indigenous peoples, the right to self-determination and most other human rights cannot be fully realized without respect for their world views and cultural resources, and therefore implies their right not to be forced into assimilation.[45] An integrated approach, bringing together universality and cultural diversity is essential, as is free, prior and informed consent. The United Nations Declaration on the Rights of Indigenous Peoples references the importance of both the Universal Declaration of Human Rights (art. 1) and diversity (art. 15) for the rights of indigenous peoples. Moreover, it requires that "in the exercise of the

[43] UNESCO, Universal Declaration on Cultural Diversity, arts. 4 and 5.

[44] Victoria Tauli-Corpuz, "The human development framework and indigenous peoples' self-determined development or development with culture and identity" (E/C.19/2010/CRP.4).

[45] See General Assembly resolution 61/295 (United Nations Declaration on the Rights of Indigenous Peoples), in particular arts. 3–5 and 8. Of the 46 rights in the Declaration, 11 relate directly to culture and cultural matters.

rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected" (art. 46 (2)).

63. The International Year of Indigenous Languages will be celebrated in 2019. An excellent way to mark that event in a holistic manner would be to ensure that the Universal Declaration of Human Rights and material about its history are made accessible in more indigenous languages.

64. Besides affirming the right to self-identify with a variety of groups, including on the basis of grounds such as ethnicity, descent, religion, beliefs and convictions, language, gender, age, value affiliation, nationality and geographical location, cultural rights also include the right to change these choices of references throughout one's life. However, this is not a communitarian vision. The right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity, to dissociate from an interpretation of values or beliefs and step out of the association with a group must be protected and ensured for all. One also has the possibility to reject emphasis on group affiliation and focus on shared equal citizenship and *vivre-ensemble* (living together in harmony). This is a worldview important to the self-identification and human rights stance of many. The Special Rapporteur has previously raised concerns about the misuse of the term "community" and the presumption of group identity and its consequences (A/HRC/31/59, paras. 11–18).

65. Often, those challenging an interpretation or choosing to dissociate from a particular practice or tradition do not necessarily wish to dissociate from the whole cultural framework. On the contrary, and especially when questioning practices that have a detrimental impact on human rights, their critical stance aims at strengthening their cultural, social and spiritual resources by bringing them into line with universal human rights, identifying more suitable ways to continue to express their values and improving their contribution to the global culture of human rights.

66. When space for constructive debates and contestation is non-existent within a particular group or a person does not recognize himself/herself anymore in its shared values and practices, individuals may wish to completely exit that group. As established by treaty bodies, "no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity",[46] and States "must take measures to ensure that ... the freedom to adopt the religion or belief of one's choice — including the freedom to change religion or belief and to express one's religion or belief — will be guaranteed and protected in law and in practice ... without discrimination".[47] In all countries, there should be provisions and mechanisms to protect those who decide to step outside given cultural and religious frameworks, such as non-religious persons, from physical attacks, threats and incitement to hatred and violence from any person or group, including members of their family.

67. Furthermore, exiting a collective because one does not share its interpretation of culture does not alienate the person of his/her cultural right to continue to refer to those cultural resources and develop alternative interpretations.

[46] Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 22.

[47] Human Rights Committee general comment No. 28 (2000) on the equality of rights between men and women, para. 21; see also general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 5.

VI. Conclusions and recommendations

A. Conclusions

68. **To commemorate the seventieth anniversary of the Universal Declaration of Human Rights, we must defend and promote its core principle of universality and implement its substantive articles, including article 27 guaranteeing the right to take part in cultural life, without discrimination. We must promote this message through scholarship, advocacy, policy, law, arts and culture. The message of the Universal Declaration reverberates across the regions in diverse voices, such as in the lyrics of Tunisian singer Emel Mathlouthi's song *Kelmti Horra*: "I am all the free people of the world put together".**

69. **In today's polarized world, we need a sophisticated multi-directional stance. We must simultaneously defend the universality of human rights from those seeking to use culture and cultural claims as a weapon against rights and against others, and at the same time defend cultural rights and respect for cultural diversity, in accordance with international standards, when those principles come under attack.**

70. **The present report documented different types of threats to the human rights system. Universality is under threat in particular from attempts to justify a selective approach to it, by: (a) granting human rights only to some persons and not to others; (b) committing only to some rights, such as civil and political rights or economic, social and cultural rights, but not to the whole indivisible and interdependent system of human rights; or (c) recognizing as universal only the rights that all are deemed to agree on, and not all the rights in the universal framework guaranteeing human dignity and equality for all. Any State or stakeholder advocating these selective approaches undermines the principles of universality, indivisibility and interdependence of rights and weakens the foundations of the human rights system. When some rights or some persons are taken out of the protective framework of human rights, the door is open for other rights and other groups to be similarly excluded. The universal guarantee of all human rights to all human beings must be defended to protect the dignity of all and to promote a universal human rights culture.**

71. **The other set of major threats concerns cultural relativism and repeated attempts to put particularities — of one region, one group, one world view or one interpretation of culture and religion — above the universal norms of human rights. Cultural relativism has been repudiated by human rights law and should not be tolerated in any setting, and especially not in the United Nations and human rights bodies. The Special Rapporteur reaffirms that each cultural practice, norm and tradition must stand the test of universal human rights and show its capacity to build and maintain human dignity to be legitimate.**

72. **It is essential in 2018 to understand that there is a diversity of cultural diversities in each and every society, and that this is not a threat or an impediment to universal human rights, but a reality and a resource. At the same time, we must not overlook our commonalities and overemphasize our differences, remembering always that we are all equal members of the human family, sharing one fragile planet, endowed with inherent dignity and possessing equal and inalienable rights.**

B. Recommendations

73. **To protect and defend the universality of human rights and the universal human rights framework, the Special Rapporteur calls on States, international organizations, civil society organizations, experts and individuals to:**

(a) **Reaffirm the universality, indivisibility and interdependence of all human rights and their commitment to the vision of the Universal Declaration of Human Rights;**

(b) **Respect and promote cultural rights for all without discrimination; ensure and promote adequate human rights education emphasizing universality and non-discrimination, including through the arts, culture and a wide range of media;**

(c) **Ensure that the Universal Declaration of Human Rights and material about its history are made accessible, including on the Internet and in more indigenous and local languages.**

74. **In this regard, the Special Rapporteur calls on States to:**

(a) **Continue to engage with and support human rights mechanisms at the international, regional and national levels, including through adequate funding, so that they can uphold universal human rights for all;**

(b) **Ratify the two international covenants on human rights and their optional protocols and implement them fully in national law and practice;**

(c) **Remove all reservations to human rights treaties, in particular to the Convention on the Elimination of All Forms of Discrimination against Women, that are contrary to the object and purpose of the treaty and that undermine universality;**

(d) **Adopt measures to safeguard and support human rights defenders advocating for universal human rights, in line with the Declaration on Human Rights Defenders (General Assembly resolution 53/144, annex).**

75. **In order to effectively challenge cultural relativism, the Special Rapporteur calls on States to:**

(a) **Review laws and legal norms that discriminate against anyone on the basis of cultural or religious arguments, and take the steps necessary to bring them into line with universal human rights standards;**

(b) **Refrain from using culture, cultural rights or tradition to justify violations of international human rights and ensure that no representative of the State does so in national or international forums; continuously maintain and promote the idea that culture, cultural rights and the exercise of cultural diversity are grounded in and subject to the universal human rights framework and international standards.**

76. **All relevant bodies, including States, international and civil society organizations, experts, academics and individuals should:**

(a) **Challenge, whenever necessary, intolerant ideologies, including fundamentalist and populist ideologies, that incite or result in discrimination against any person or group or the violation or denial of any universal human rights;**

(b) Systematically challenge practices, norms, discourses and interpretations that reduce the cultural choices of persons by encouraging informed debates about how these can be modified to be in conformity with international human rights standards;

(c) Relevant academic bodies should consider sponsoring symposiums, curricula and scholarship on the importance of universality, which, in accordance with academic freedom, challenge cultural relativism.

77. **To improve respect for cultural diversity within the framework of universal rights, States should:**

(a) Take the steps necessary to bolster the right of each person to freely choose and have cultural references and to identify with multiple and simultaneous cultural groups or none, to participate in cultural life and to be able to change their choices and exit groups;

(b) Strengthen the mechanisms for the protection of persons at risk of human rights abuses, intimidation, violence and discrimination for choosing not to participate in certain cultural practices, or who challenge norms and interpretations or decide to exit a group with which they no longer identify; where such mechanisms of protection do not exist, develop them;

(c) Reaffirm the importance of secularism and the separation of religion and State, and of secular spaces, for the full implementation of freedom of religion or belief and all other human rights;

(d) Respect, protect and fulfil the United Nations Declaration on the Rights of Indigenous Peoples and respect and operationalize the right to free, prior and informed consent in all processes that have an impact on their cultural rights;

(e) Recognize and value cultural diversity, respect its free development within the framework of universal human rights and avoid abusively restricting its expression; recognize and respect cultural dissent, syncretism and cultural mixing, as well as the rights to re-interpret and recreate cultures;

(f) Develop and implement cultural policies and measures aimed at protecting and promoting cultural diversity, in accordance with international standards, and enabling each person to freely take part in it;

(g) Create an enabling environment to enhance access to and participation in cultural life, as well as access to the cultural resources of others; this includes reviewing educational programmes and manuals to ensure that they provide access to knowledge about a diversity of cultural resources and to human rights education;

(h) Maintain, protect and develop open, safe and diverse public spaces, including intercultural spaces, and foster opportunities for a diversified cultural life to evolve in such spaces;

(i) Set up an institutional framework and support cultural institutions and public infrastructure in facilitating access to a rich and diversified range of cultural expressions;

(j) Ratify and implement the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

78. **In this regard, civil society organizations, experts, academics and individuals should:**

(a) **Revitalize cultural traditions and customs but also consciously contribute to reviewing aspects that are not consistent with international human rights standards and do not promote gender equality;**

(b) **Encourage debates about and re-evaluation of all practices that violate any universal human rights, with a view to bringing them in line with international norms and standards; in doing so, foster access to adequate information about the human rights approach.**

Annex

Towards a global history of the Universal Declaration of Human Rights

1. The Universal Declaration of Human Rights, though drafted from 1946 to 1948, at a time when many States had not yet achieved independence, was truly the product of a global drafting process, and delegates from every region of the world, both women and men, made significant contributions to strengthening its guarantees.[1] For example, important contributions were made to the drafting of article 27 on cultural rights by States including Chile, France and Peru and by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The representative of Peru, José Encinas, introduced the word "freely" to the draft, insisting that it was not sufficient to state that everyone has the right to cultural participation and development, but that the document should emphasize complete freedom of creative thought "in order to protect it from harmful pressures which were only too frequent in recent history."[2]

2. The Universal Declaration of Human Rights is truly an intercultural document in multiple senses: "people from various cultures and religions were involved in the writing of the text", it "voiced a concern for cultural belonging and the importance of culture for the well-being of the individual person" and it "was a product of what one could call 'intercultural strategies and dialogues', that is, argumentation that tried to reach agreements even though the drafters have very different cultural/ethical backgrounds and views."[3] The representative of China, Peng Chun Chang, was among those who emphasized that the Declaration should be "universal and religiously neutral".[4]

3. Women's rights advocates from around the world worked to enhance the Declaration and make it "the universalizing document it has remained".[5] Anti-colonial and anti-racist activists contributed to the surrounding debates. The text adopted was not an imposition of the values or cultures of any one region of the world, but rather a foundational challenge to entrenched systems of racial and sexual discrimination, as well as religious privilege, that were prevalent around the world at the time of its drafting. A universalist frame based on reason and conscience rather than on God and country was arrived at, not in spite of cultural, religious or philosophical diversity, but because of such diversity, as the only way to guarantee

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[1] On the many contributions of the Global South to the elaboration of human rights standards, see Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press, 2016). There were 58 States Members of the United Nations when the Universal Declaration was adopted on 10 December 1948.

[2] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, University of Pennsylvania Press, 1999), p. 218.

[3] Hans Ingvar Roth, "Peng Chun Chang, intercultural ethics and the Universal Declaration of Human Rights", in Göran Collste, ed., *Ethics and Communication: Global Perspectives* (London, Rowman and Littlefield International, 2016), pp. 98 and 99. For more on Chang's contributions, see Hans Ingvar Roth, *P. C. Chang and the Universal Declaration of Human Rights* (Philadelphia, University of Pennsylvania Press, 2018).

[4] Ibid., p. 105.

[5] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Women helped make the Universal Declaration of Human Rights 'universal'", 6 March 2018, available at https://medium.com/@UNHumanRights/women-helped-make-the-universal-declaration-of-human-rights-universal-784479830153; citing an interview with Rebecca Adami, author of *Women and the Universal Declaration of Human Rights* (forthcoming).

the human rights, including cultural rights, of everyone.[6] This was the one generalizable position, and indeed the only one that could respect diversity.

4. The Universal Declaration of Human Rights was drafted at a time of devastation and insecurity, with millions of refugees displaced across Europe, the Indian subcontinent and many other parts of the world. The ghost of the Holocaust and other atrocities of the Second World War haunted the process, leading states to sustain "a theory premised on the centrality of people — both in their collective and individual capacities — that enjoyed primacy over the claims of the sovereign state".[7] Among the drafters were those who were committed to the total defeat of Nazism and fascism, to the end of the age of empires and to the recognition that these goals required a common strategy: a universal search for liberty and equality. This search crystallized in the Declaration. Significant additions were made by recently decolonized States with regard to the prohibition of slavery and of discrimination, as well as guarantees of the rights of women and the right to self-determination.[8]

5. Hernán Santa Cruz of Chile, a member of the drafting committee, described the drafting exercise as "a truly significant historic event in which a consensus had been reached as to the supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing".[9]

6. All too often the history of human rights norms, and of the Universal Declaration of Human Rights itself, is written by Governments opposed to universality, and even by some who advocate it, and by some academic critics of human rights in an exclusivist way, emphasizing the contributions of European and North American delegates and overlooking the truly global contributions that blended together to create a transcultural human rights framework. While it is appropriate to celebrate the well-known and significant contributions of individuals such as Eleanor Roosevelt and René Cassin, insufficient attention has been paid to the work of other women delegates and delegates from the global South in the drafting process. We need to recognize and pay tribute to the efforts of delegates such as Minerva Bernardino, a diplomat and feminist leader from the Dominican Republic, Hansa Mehta, an anti-colonial feminist, a member of the Constituent Assembly and the representative of India to the Commission on Human Rights, and Begum Shaista Ikramullah from Pakistan. It is thanks to Mehta that the first article of the declaration refers to "all human beings" rather than "all men", which she feared would be interpreted to exclude women[10]. Bernardino pushed for the use of the phrase "equality of men and women" in the preamble. [11]

7. Divisions were not along clear lines of religious, cultural or national blocs, but sometimes within them. For example, it is in part thanks to Ikramullah (who also received support from Egypt at the time) that article 16 contains the guarantee of equal rights in marriage, notwithstanding the opposition of Saudi Arabia — a truly pioneering achievement for its time. This provision challenged racial segregation laws in countries such as the United States of America, as well as limitations on marriage based on religion, caste and nationality in other countries. The Foreign Minister of Pakistan defended the right to leave religion in the General Assembly

[6] Chetan Bhatt, "The challenges to universalism", presentation at the Special Rapporteur's expert consultation, Geneva, 28 February 2018.

[7] David Mayers, "Humanity in 1948: the Genocide Convention and the Universal Declaration of Human Rights", *Diplomacy and Statecraft*, vol. 26, No. 3 (2015).

[8] Gita Sahgal, "Who wrote the Universal Declaration of Human Rights?", Open Democracy, 2012, available at www.opendemocracy.net/5050/gita-sahgal/who-wrote-universal-declaration-of-human-rights.

[9] See www.un.org/en/sections/universal-declaration/history-document/index.html.

[10] Sahgal, "Who wrote the Universal Declaration of Human Rights?".

[11] OHCHR, "Women helped make the Universal Declaration of Human Rights 'universal'".

debate, quoting the Qur'an.[12] Today, we have lurched sharply backwards, with 13 countries in the world applying the death penalty against so-called apostates.

8. The former Special Rapporteur on freedom of religion or belief has stressed that "Universality is inherent in human rights... The very title of the Universal — and not international — Declaration of Human Rights reinforced that trend, the objective being to unite all individuals over and above their racial, ethnic, religious and gender differences and combine unity and diversity in the name of the equal dignity in regard to differences of identity" (E/CN.4/2002/73/Add.2, para. 27). Moreover, he explained that "universality arises out of a concept which is at the very root of human rights: the consubstantial and inherent dignity of the person" (ibid., para. 29).

9. At the time of its adoption, notwithstanding abstentions, not a single country voted against the Universal Declaration of Human Rights.

10. The Special Rapporteur is delighted to note that the Universal Declaration of Human Rights, which is perhaps one of the greatest human achievements of the twentieth century, is the single most translated document, being currently available in over 500 languages.

11. The Declaration remains imperfect, as is to be expected in any document drafted by human beings, featuring now-archaic language about, inter alia, "brotherhood" and "his family,"[13] omitting specific mention of issues now considered critical human rights questions, and to some degree sidestepping the lived reality of colonialism that was ongoing at the time of its drafting. Nevertheless, it represents a remarkable feat of transcultural negotiation and compromise that might be impossible to achieve in today's polarized world. It has become not only the touchstone of the human rights movement and an important international legal standard, but also one of the most important pieces of intangible cultural heritage created during the twentieth century and, thus, part of the cultural heritage of all humankind. It merits and requires vigilant protection from acts of intentional destruction or the effacement of its complex global history.

[12] See A/PV.182, p. 890. See also Glen Johnson and Janusz Symonides, *The Universal Declaration of Human Rights: a history of its creation and implementation, 1948–1998* (Paris, UNESCO, 1998), p. 38, available at http://unesdoc.unesco.org/images/0011/001144/114488E.pdf.

[13] Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Belknap Press of Harvard University Press, 2006), pp. 41–43. MacKinnon asks, "if we were all enjoined to 'act towards one another in a spirit of sisterhood,' would men know it meant them, too?", p. 42.